THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 19218 of 2003

Dated: 30.10.2006

Between:

P. Sudheeraiah.

..... PETITIONER

AND

A.P.S.R.T.C., rep. by its Vice Chairman & Managing Director, Musheerabad, Hyderabad and others.

....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No.19218 of 2003

Order:

This writ petition is filed seeking a Mandamus to declare the action of the respondents in not granting notional increments for the period from 04.02.1987 to 16.09.1998, as illegal and arbitrary, and consequently to direct the respondents to fix the pay of the petitioner in the post of Conductor as on 16-09-1998 with consequential pay fixation in the cadre of Assistant Depot Clerk/Depot Clerk and to pay the arrears of salary consequent upon fixation of pay w.e.f. 16.09.1998.

2. The petitioner was initially appointed as Conductor in the respondent-Corporation on 25.12.1976 and subsequently promoted as Assistant Depot Clerk. While he was working as Conductor at Srikalahasti Depot, he was issued a charge sheet dated 06.04.1985 on the ground of misconduct, and after conducting an enquiry he was removed from service, by order dated 04.02.1987. Against the said removal order, he preferred appeal, which was rejected. Thereafter, he raised an industrial dispute in I.D.No.233 of 1994, and the Labour Court, vide award dated 28-02-1998, allowed the I.D., setting aside the order of removal and directed the respondents to reinstate him with continuity of service, but without back-wages and on reinstatement to defer three annual grade increments with cumulative effect. The petitioner has not questioned the same, hence the said award of the Labour Court attained finality. Pursuant to the said award, the petitioner was reinstated into service as Conductor and subsequently promoted as Assistant Depot Clerk, and after attaining the age of superannuation he retired from service. Now, the petitioner filed the present writ petition stating that

pursuant to the award of the Labour Court, though he was reinstated into service and promoted according to the seniority, the respondents failed to grant notional increments for the period from 04.02.1987 to 16.09.1998 and fix his pay as on 16.09.1998.

3. Respondents filed counter denying the allegations of the petitioner. It is stated that the Labour Court while setting aside the impugned order directed the Corporation to reinstate the petitioner into service with continuity of service but without back wages, and unless the Labour Court grants the monetary benefit, reinstatement by simple continuity of service does not entitle the petitioner to get the benefit of notional increments. Further, they justified their action for not granting notional increments to the petitioner for the period, for which he is out of service, while relying on the judgments of the apex Court in ***APSRTC vs. S. NARASA GOUD***[1]***, reaffirmed in APSRTC v. ABDUL KAREEM AND D. SHANKAR***[2]***.***

4. Learned counsel for the petitioner vehemently opposed the said judgments relied upon by the respondents-Corporation and contended that the facts of the case in the above cited judgments are not applicable to the facts of the present case and so, the petitioner is entitled to all the consequential benefits as he was reinstated into service, as per the directions of the Labour Court.

5. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

6. The contention of the petitioner is that since the Labour Court directed the respondents-Corporation to reinstate him into service with continuity of service, he is entitled to all consequential benefits. Such a contention cannot be accepted. I n ***ABDUL KAREEM's*** case (2 supra), the apex Court held thus.

"The principle of law on point are no more res integra.

This Court in S. Narsagoud (supra) succinctly crystallized principle of law in Paragraph 9 of the judgment:

> "We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorized absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorized absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service."
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> Reverting to the facts of the case at hand, as already noticed, the Labour Court specifically directed that the reinstatement would be without back wages. There is no specific direction that the employee would be entitled to all the consequential benefits. Therefore, in the absence of specific direction in that regard, merely because an employee has been directed to be reinstated without back wages, he could claim a benefit of increments notionally earned during the period when he was not on duty or during the period when he was out of service. It would be incongruous to suggest that an employee, having been held guilty and remained absent from duty for a long time, continues to earn increments though there is no payment of wages for the period of absence."

A bare reading of the said judgment clearly shows that in the absence of specific direction that the employee would be entitled to all the consequential benefits, merely because an employee has been directed to be reinstated without back wages, he cannot not claim benefit of increments notionally earned during the period when he was not on duty or during the period when he was out of service. In the instant case, the Labour Court specifically directed that the reinstatement would be without back wages and there is no specific

direction that the petitioner would be entitled to all the consequential benefits. On the other hand, as seen from the award of the Labour Court, the petitioner was punished with deferment of three annual grade increments with cumulative effect. Therefore, in the absence of a specific direction with regard to the notional increments, the petitioner cannot contend that he is entitled to the notional increments for the period he was out of service.

Under the above circumstances, the writ petition is devoid of merit and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 30.10.2006
sj/nsr

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[1] JT 2003(1) SC 179

[2] JT 2005(6) SC 553